

Wage and Hour Division, Labor

§ 783.41

not constitute service performed primarily as an aid in the operation of these vessels as a means of transportation and consequently are not employed as "seamen" (*McCarthy v. Wright & Cobb Lighterage Co.*, 163 F. (2d) 92; *Anderson v. Manhattan Lighterage Corp.*, 148 F. (2d) 971, certiorari denied 326 U.S. 722; *Woods Lumber Co. v. Tobin*, 20 Labor Cases 66, 640 (W.D. Tenn, 1951), aff'd, 199 F. (2d) 455). Whether an employee is on board a vessel primarily to perform maritime services as a seaman or loading and unloading services typical of such shore-bases personnel as longshoremen is a question of fact and can be determined only after reviewing all the facts in the particular case.

§ 783.37 Enforcement policy for non-seaman's work.

In the enforcement of the Act, an employee will be regarded as "employed as a seaman" if his work as a whole meets the test stated in § 783.31, even though during the workweek he performs some work of a nature other than that which characterizes the service of a seaman, if such nonseaman's work is not substantial in amount. For enforcement purposes, the Administrator's position is that such differing work is "substantial" if it occupies more than 20 percent of the time worked by the employee during the workweek.

WHAT IS AN "AMERICAN VESSEL"

§ 783.38 Statutory definition of "American vessel".

The provisions of section 6(b)(2) prescribe special methods for computing minimum wages and hours worked under the Act which are applicable only to seamen who are employed on American vessels. An "American vessel", which would appear to signify a vessel of the United States as distinguished from a foreign vessel, "includes", under the terms of the definition in section 3(p) of the Act, "any vessel which is documented or numbered under the laws of the United States." The Department of the Treasury, Bureau of Customs and the United States Coast Guard, respectively, are responsible for documentation and numbering of vessels.

§ 783.39 "Vessel" includes all means of water transportation.

Since the Act does not define "vessel" it is appropriate to apply the definition of "vessel" as set forth in the United States Code (1 U.S.C. 3). The Code defines "vessel" as including "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water". But the Federal Boating Act of 1958, (under which the U.S. Coast Guard is responsible for numbering vessels) and the Documentation Regulations administered by the Bureau of Customs, utilize this basic definition, with the addition of specific exclusions for "seaplanes" and "aircraft" (46 U.S.C. 527; 19 CFR 3.1(a)).

§ 783.40 "Documented" vessel.

A vessel "documented * * * under the laws of the United States" is typically a vessel which has been registered, enrolled and licensed, or licensed by the Bureau of Customs under the laws of the United States (46 U.S.C. 11, 193, 251-252, 258, 840). Although Bureau of Customs regulations provide for three types of documentations, distinctions between the categories of vessels subject to them are immaterial for the purposes of the Fair Labor Standards Act, since a vessel with any of the three kinds of documentation is an "American vessel" within the section 3(p) definition. Generally, any vessel of five net tons or more which is owned by a citizen of the United States is "entitled to" documentation. Complete information on the documentation requirements may be found in 19 CFR part 3.

§ 783.41 "Numbered" vessel.

A vessel "numbered under the laws of the United States" means a vessel numbered pursuant to the provisions of Federal law, including vessels numbered under any State numbering system approved by the Secretary of the Department under which the U.S. Coast Guard is operating, in accordance with section 2(c) of the Federal Boating Act of 1958 (46 U.S.C. 527-527h). Generally, any vessel, which is not required to have and does not have, a valid marine document issued by the Bureau of Customs and is propelled by